

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

355P0163

SENATE JUDICIARY ENGROSSED NO. **SB 102** - 1/28/2008

Introduced by: Senators Turbak Berry, Garnos, Jerstad, McNenny, and Olson (Ed) and
Representatives Cutler, Deadrick, Engels, Faehn, Feinstein, Gillespie,
Glenski, and Kirkeby

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the homestead
2 exemption, personal property exemptions, and insurance and annuity exemptions.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 43-31-2 be amended to read as follows:

5 43-31-2. The homestead must embrace the house used as a home by the owner thereof, being
6 either, real property or a mobile home ~~as hereinafter defined~~, and if he or she has two or more
7 houses or mobile homes ~~thus~~ used at different times and places, such owner may select which
8 he or she will retain as a homestead.

9 ~~It must~~ The homestead may not embrace more than one dwelling house or any other
10 buildings except such as are properly appurtenant to the homestead ~~as such; but~~ However, a
11 shop, store, or other building situated on real property and ~~really~~ used or occupied by the owner
12 in the prosecution of his or her own ordinary business may be deemed appurtenant to such
13 homestead.

14 If a husband or wife is required to leave the homestead, either pursuant to a protection order



1 obtained by his or her spouse, or otherwise to preserve peace in the home, the absence from the
2 homestead does not cause a waiver or abandonment of his or her interest in the homestead.

3 If the homestead is divided by court order pursuant to § 25-4-44 and a lien is imposed upon
4 the homestead for the benefit of the nonresident spouse pursuant to § 25-4-42, absence from the
5 homestead and loss of title to the homestead pursuant to the court order, does not constitute
6 forfeiture of the homestead, and homestead protection shall attach to the judicial lien.

7 ~~Mobile homes shall include~~ For the purposes of this section, a mobile home includes any
8 vehicle without motive power which can provide adequate, comfortable, all season quarters for
9 the purpose of making a residence thereof and ~~which vehicle~~ is larger than two hundred forty
10 square feet, measuring at the base thereof. Such mobile home must be registered in South
11 Dakota at least six months prior to the claim of exemption.

12 Section 2. That § 43-45-2 be amended to read as follows:

13 43-45-2. The property mentioned in this section is absolutely exempt from all such process,
14 levy, or sale, except as otherwise provided by law:

- 15 (1) All family pictures;
- 16 (2) A pew or other sitting in any house of worship;
- 17 (3) A lot or lots in any burial ground;
- 18 (4) The family Bible and all schoolbooks used by the family, and all other books used
19 as a part of the family library, not exceeding in value two hundred dollars;
- 20 (5) All wearing apparel and clothing of the debtor and his family;
- 21 (6) The provisions for the debtor and his family necessary for one year's supply, either
22 provided or growing, or both, and fuel necessary for one year;
- 23 (7) All property in this state of the judgment debtor if the judgment is in favor of any
24 state for failure to pay that state's income tax on benefits received from a pension or

1 other retirement plan while the judgment debtor was a resident of this state;

2 (8) One vehicle per person, not exceeding in value six thousand dollars.

3 Section 3. That § 43-45-3 be amended to read as follows:

4 43-45-3. A homestead:

5 (1) As defined and limited in chapter 43-31, is absolutely exempt; or

6 (2) ~~In the event such~~ If a homestead is sold under the provisions of chapter 21-19, ~~or is~~
7 ~~sold by the owner voluntarily, or is divided by court order pursuant to § 25-4-44 and~~
8 ~~a lien is imposed upon the homestead for the benefit of the nonresident spouse~~
9 ~~pursuant to § 25-4-42, the proceeds of such sale, or the value of such lien, not~~
10 ~~exceeding the sum of thirty~~ seventy-five thousand dollars, is absolutely exempt for
11 a period of one year after the receipt of such proceeds by the owner or lien holder
12 under § 25-4-42. Such exemption ~~shall be~~ is limited to one hundred seventy thousand
13 dollars for a homestead of a person seventy years of age or older or the unremarried
14 surviving spouse of such person so long as it continues to possess the character of a
15 homestead.

16 Section 4. That § 43-45-4 be amended to read as follows:

17 43-45-4. In addition to the property provided for in §§ 43-45-2 and 43-45-3, ~~the each~~ debtor;
18 ~~if the head of a family,~~ may, personally, or by agent or attorney, select from all ~~other~~ of the
19 debtor's other personal property, not absolutely exempt, goods, chattels, merchandise, money,
20 or other personal property not to exceed in the aggregate ~~six~~ ten thousand dollars in value; ~~and,~~
21 ~~if not the head of a family, property as aforesaid of the value of four thousand dollars, which~~
22 ~~is also exempt, and,~~ which shall be chosen and appraised as provided by law.

23 Section 5. That § 43-45-6 be amended to read as follows:

24 43-45-6. The proceeds of any insurance upon the life of any person residing in this state, ~~at~~

1 ~~the time of his death and~~ who leaves a surviving ~~widow, husband, spouse~~ or minor child or
2 children, payable upon ~~his~~ the person's death to ~~his~~ the person's estate, executor, or
3 administrator, and not assigned to any other person, shall, to any amount not exceeding ~~ten~~ fifty
4 thousand dollars, inure to the use of such surviving ~~widow, husband, spouse or~~ minor child or
5 children; ~~and such.~~ Such amount ~~shall~~ is not ~~be~~ subject to the payment of any debt of such
6 decedent, or of such surviving ~~widow, husband, spouse or~~ minor child or children. Whenever
7 the proceeds of such insurance become payable and the insurer makes payment thereof to the
8 administrator or executor of the estate of such person, such payment ~~shall~~ fully ~~discharge~~
9 discharges the insurer from all claims under the policy or contract, and such insurer need not
10 follow the distribution of such payment.

11 Section 6. That § 58-12-4 be amended to read as follows:

12 58-12-4. The proceeds of a policy of life or health insurance to the total amount of ~~twenty~~
13 fifty thousand dollars only, in the absence of any agreement or assignment to the contrary, shall
14 inure to the separate use of the insured, ~~his~~ the insured's surviving spouse, or children, as the
15 case may be, independently of the creditors of any of them and ~~shall~~ is not ~~be~~ subject to the
16 payment of the debts of any one or all of such persons, notwithstanding that the proceeds may
17 be payable directly to the insured or surviving spouse or children as the named beneficiary or
18 beneficiaries or otherwise; ~~and the.~~ The proceeds of an endowment policy, payable to the
19 insured on attaining a certain age, to the extent of ~~twenty~~ one hundred thousand dollars shall at
20 all times be exempted from the debts of such spouse or children of the insured; ~~and the avails.~~
21 The proceeds of any life or health insurance or other sum of money not exceeding ~~twenty~~ fifty
22 thousand dollars made payable by any mutual aid or benevolent society to any member or
23 beneficiary spouse or children or both shall likewise be exempt.

24 Section 7. That § 58-12-8 be amended to read as follows:

1 58-12-8. The total exemption under § 58-12-6 of benefits presently due and payable to any
2 annuitant periodically or at stated times under all annuity contracts under which he or she is an
3 annuitant, ~~shall~~ may not at any time exceed ~~two hundred and fifty~~ one thousand five hundred
4 dollars per month for the length of time represented by such installments;
5 ~~and such. Any periodic payments in excess of two hundred and fifty~~ one thousand five hundred
6 dollars per month ~~shall be~~ is subject to levy in the manner provided by law and the rules of
7 court.

8 Section 8. That § 58-12-9 be amended to read as follows:

9 58-12-9. If the total benefits presently due and payable to any annuitant under all annuity
10 contracts under which he or she is an annuitant, ~~shall~~ at any time exceed payment at the rate of
11 ~~two hundred and fifty~~ one thousand five hundred dollars per month, then the court may order
12 such annuitant to pay to a judgment creditor or apply on the judgment, in installments, such
13 portion of such excess benefits as ~~to the court may appear~~ finds just and proper, after due regard
14 for the reasonable requirements of the judgment debtor and ~~his~~ the debtor's family, if dependent
15 upon ~~him~~ the debtor, as well as any payments required to be made by the annuitant to other
16 creditors under prior court orders.